

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Communications Assistance for |) | ET Docket No. 04-295 |
| Law Enforcement Act and |) | |
| Broadband Access and Services |) | RM-10865 |

**COMMENTS
of the
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
and the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ and the National Telecommunications Cooperative Association (NTCA) (collectively, Associations)² hereby submit these joint comments in the above-noted proceeding.³ In addition to serving as incumbent local exchange carriers (ILECs), nearly all of the Associations' members provide packet-based

¹ OPASTCO is a national trade association representing over 560 small ILECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47U.S.C. § 153(37). OPASTCO members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. These include dial-up Internet access, high-speed and advanced services, mobile wireless services, competitive local exchange service, long distance resale, and video services.

² NTCA is an industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

³ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-153

data services, including high-speed and broadband services, to rural consumers.

II. THE COMMISSION SHOULD EXEMPT FROM CALEA THE FACILITIES-BASED BROADBAND INTERNET ACCESS SERVICES OF ALL RURAL TELEPHONE COMPANIES

The FNPRM asks whether small and rural facilities-based broadband Internet access providers should be exempt from the Communications Assistance for Law Enforcement Act (CALEA).⁴ Although most rural ILECs' circuit-switched networks are compliant with CALEA,⁵ the Commission should exempt the facilities-based broadband Internet access services of all rural telephone companies, as defined by 47 U.S.C. §153(37).

For a number of years, rural ILECs' circuit-switched networks have been required to be CALEA-compliant, even though they generally experience few, if any, intercept requests.⁶ As the figures provided by the 2004 Wiretap Report demonstrate, many states that are predominately rural had no requests for intercepts from federal law enforcement agencies (LEAs) in 2004. Intercepts that do occur in predominantly rural states tend to be concentrated in more urban regions. The overwhelming majority of the Associations' members have either never had an intercept request or, at most, have had only very few throughout their history.

History has also shown that upgrading existing systems for CALEA compliance is an expensive endeavor. While arrangements were made to reimburse switching vendors for developing and manufacturing CALEA compliant circuit based technology, the

(rel. Sept. 23, 2005) (FNPRM).

⁴ FNPRM, para. 49.

⁵ OPASTCO comments, (fil. Nov. 8, 2004), p. 3.

⁶ *Ibid.*; 2004 Wiretap Report, Office of the United States Court, April 2005 (available at <http://www.askcalea.net/docs/2004wiretap.pdf>) (2004 Wiretap Report); Table 1, p. 14; Table 2, pp. 15-17;

compliant equipment was sold to carriers with mandatory expensive add-ons. CALEA's promise of reimbursable compliance expenses has never materialized and rural carriers have been forced to spend precious resources upgrading for an application that has been rarely, if ever, employed by law enforcement.

A reasonable cost-benefit analysis would recommend against requiring the facilities-based broadband Internet access services of rural telephone companies to be CALEA-compliant, especially considering that per-customer costs are already disproportionately higher for these carriers.

Instead of focusing its attention on the facilities-based broadband Internet access services of rural telephone companies, the Commission should consider to what extent CALEA should apply to the applications that utilize rural ILECs' broadband infrastructure. The Commission's decision that required certain Voice over Internet Protocol (VoIP) service providers to supply access to 911 emergency services established a relevant precedent.⁷ Rural ILECs do not know what applications end-users choose to run over the broadband connections that they provide. It should therefore be incumbent upon the application provider to comply with CALEA, not the rural ILEC provider of facilities-based broadband Internet access just as it is incumbent upon providers of interconnected VoIP services to provide access to 911 services.

The Commission asks in the FNPRM whether, instead of exempting certain providers from CALEA, it might be preferable to define the requirements of CALEA

Table 4 pp. 21-23.

⁷ *IP-Enabled Services*, WC Docket No. 04-36; *E911 Requirements for IP-Enabled Service Providers*, WC Docket 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10267-10270, paras. 38-43 (2005).

differently for certain classes of providers.⁸ The simplest and most sensible course of action would be to exempt from CALEA the facilities-based broadband Internet access services provided by all rural telephone companies. However, should the Commission choose not to take this approach, it could adopt less burdensome CALEA requirements for the broadband Internet access services provided by rural ILECs. The Associations recommend that the Commission consider adopting capability requirements that reflect the historical need of law enforcement, or the lack thereof, and the technical limitations of rural carriers' infrastructure. Further, simplified procedures for small carriers to obtain extensions of time to comply under CALEA section 107 are necessary. The high cost of CALEA compliance combined with the technical difficulties and the inability of rural carriers to obtain necessary equipment significantly slowed the pace of CALEA compliance in the circuit-switched environment, and is likely to do so in a packet environment. Small and rural carriers should be able to upgrade according to their own timetable and extensions should be granted based on cost and/or the lack of available equipment.

The Commission is obligated to comply with the Regulatory Flexibility Act,⁹ which directs federal agencies to consider less burdensome rules for small entities in a manner that achieves the regulatory goal while minimizing impacts on small businesses. There is no reason to impose expensive compliance requirements in areas where history shows that law enforcement requests very few, if any, intercepts.

⁸ FNPRM, para. 52.

⁹ 5 U.S.C. §§601 – 612.

III. CONCLUSION

The facilities-based broadband Internet access services of all rural telephone companies should be exempt from CALEA, since these carriers have had few, if any, requests for intercepts from LEAs and the cost of compliance is disproportionately high for small carriers serving rural America. Further, rural ILECs have no knowledge of what applications end-users choose to run over the broadband infrastructure they provide.

The intercept capability should be focused on application providers, not the rural ILEC broadband infrastructure providers. Should the Commission decide not to exempt the facilities-based broadband Internet access services of rural ILECs, less burdensome CALEA requirements should be adopted for these carriers.

Respectfully submitted,

**THE NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

By: /s/ Daniel Mitchell
Daniel Mitchell

By: /s/ Jill Canfield
Jill Canfield

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
703-351-2000

**THE ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

By: /s/ John McHugh
John McHugh
Technical Director

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

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CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail, on this, the 14th day of November, 2005, to those listed on the attached sheet.

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich

SERVICE LIST
ET Docket No. 04-295

Eric Menge
Office of Advocacy
U.S. Small Business Administration
409 Third Street, SW
Washington, D.C. 20416

Eric Malinen
Senior Legal Advisor
Office of Communications
Business Opportunities
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

VIA E-MAIL

Janice Myles
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
janice.myles@fcc.gov

Best Copy and Printing, Inc.
fcc@bcpiweb.com